

Federal Acquisition Regulation

19.1305

officer shall not use the clause at 52.219-26.

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

AUTHORITY: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 63 FR 70272, Dec. 18, 1998, unless otherwise noted.

19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the “HUBZone Empowerment Contracting Program”).

(b) The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

19.1302 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

[67 FR 13066, Mar. 20, 2002]

19.1303 Status as a qualified HUBZone small business concern.

(a) Status as a qualified HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR part 126.

(b) If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at <http://www.sba.gov/hubzone>. A firm on the list is eligible for HUBZone program preferences without regard to the place of performance. The concern must appear on the list to be a HUBZone small business concern.

(c) A joint venture (see 19.101) may be considered a HUBZone small business if the business entity meets all the criteria in 13 CFR 126.616.

(d) Except for construction or services, any HUBZone small business concern (nonmanufacturer) proposing to furnish a product that it did not itself manufacture must furnish the product of a HUBZone small business concern manufacturer to receive a benefit under this subpart.

[63 FR 70272, Dec. 18, 1998, as amended at 64 FR 51832, Sept. 24, 1999]

19.1304 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see subpart 8.6); or

(2) Javits-Wagner-O’Day Act participating non-profit agencies for the blind or severely disabled (see subpart 8.7);

(b) Orders under indefinite delivery contracts (see subpart 16.5);

(c) Orders against Federal Supply Schedules (see subpart 8.4);

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(e) Requirements that do not exceed the micro-purchase threshold; or

(f) Requirements for commissary or exchange resale items.

19.1305 HUBZone set-aside procedures.

(a) A participating agency contracting officer shall set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306) or small business set-asides (see subpart 19.5).

(b) To set aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

(c) A participating agency may set aside acquisitions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

(d) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see subpart 19.5).

(e) The procedures at 19.202-1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section. When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

19.1306 HUBZone sole source awards.

(a) A participating agency contracting officer may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides (see subpart 19.5), provided—

(1) Only one HUBZone small business concern can satisfy the requirement;

(2) Except as provided in paragraph (c) of this section, the anticipated price of the contract, including options, will not exceed—

(i) \$5,000,000 for a requirement within the North American Industry Classification System (NAICS) codes for manufacturing; or

(ii) \$3,000,000 for a requirement within any other NAICS code;

(3) The requirement is not currently being performed by a non-HUBZone small business concern;

(4) The acquisition is greater than the simplified acquisition threshold (see part 13);

(5) The HUBZone small business concern has been determined to be a responsible contractor with respect to performance; and

(6) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a HUBZone sole source award.

[63 FR 70272, Dec. 18, 1998, as amended at 65 FR 46057, July 26, 2000; 68 FR 4051, Jan. 27, 2003; 69 FR 8315, Feb. 23, 2004]

19.1307 Price evaluation preference for HUBZone small business concerns.

(a) The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used—

(1) In acquisitions expected to be less than or equal to the simplified acquisition threshold;

(2) Where price is not a selection factor so that a price evaluation preference would not be considered (e.g., Architect/Engineer acquisitions);

(3) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).

(b) The contracting officer shall give offers from HUBZone small business concerns a price evaluation preference